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## **I. Introduction**

Refugees enjoy a distinct and unique standard of protection under international law within the framework of the international regime for the protection of refugees, which is based on the 1951 Convention Relating to the Status of Refugees.<sup>1</sup> There are about 16.7 million refugees worldwide.<sup>2</sup> 11.7 of those refugees are under the protection of the United Nations High Commissioner for Refugees [hereinafter UNHCR] and the remaining 5 million are registered with the United Nations Relief and Works Agency for Palestine [hereinafter UNRWA].<sup>3</sup>

United Nations [hereinafter UN] began rewriting international refugee law in 1948. There was serious awareness of the problems of refugees post World War II and that attention was a dire necessity. Currently several UN entities as well as multilateral treaties tackle refugee matters directly. International refugee law is the backbone of refugee matters, while the UNHCR<sup>4</sup> is its executing body. The 1951 Refugee Convention<sup>5</sup> and its protocol in 1967<sup>6</sup> both set out the definition of who is and who is not a refugee. Both treaties also determine the rights refugees have in host states. This is in addition to UNRWA,<sup>7</sup> which dedicates its efforts solely to address Palestinian refugee matters.

According to the 1951 Refugee Convention, a refugee is a person, who is:

Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality

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<sup>1</sup> Mari'a-Teresa Gil-Bazo, Refugee Protection under International Human Rights Law: From Non-Refoulement to Residence and Citizenship, *Refugee Survey Quarterly*, 2015, 1–32.

<sup>2</sup> UNHCR, World Refugee Day: Global forced displacement tops 50 million for first time in post-World War II era, June 14, 2014. <http://www.unhcr.org/53a155bc6.html>.

<sup>3</sup> *Id.*

<sup>4</sup> UN General Assembly, Refugees and stateless persons. Dec. 3, 1949, A/RES/319.

<sup>5</sup> UN General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>6</sup> UN General Assembly, Protocol Relating to the Status of Refugees, Jan. 31, 1967, United Nations, Treaty Series, vol. 606, p. 267.

<sup>7</sup> UN General Assembly, 302 (IV), Assistance to Palestine Refugees, Dec. 8, 1949, A/RES/302.

and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>8</sup>

The importance of the 1951 Refugee Convention lies in its power to grant refugees asylum. Yet, the 1951 Refugee Convention is also keen on providing other benefits as assistance and aid, as well as to grant them protection and a process towards a durable solution to their dilemma:

The Refugee Convention constitutes a continuation of the legal regime for the protection of refugees established in international law in the early 20th century and it predates the establishment of the international regime for the protection of human rights born in the United Nations (UN) era. While the forced movement of persons across borders and the granting of asylum to those fleeing persecution are historical constants, refugee protection only became a matter of international law after the First World.<sup>9</sup>

Stemming from the definition of refugees based on the 1951 Refugee Convention, awarding asylum to refugees is their first guarantee to protection and safety. While there is not a specific definition of the term “protection” for refugees, it is evident that protection awarded to refugees is mirrored by host states’ fulfillment of the benefits and standards of protection articles stated in the 1951 Refugee Convention.<sup>10</sup>

Within the many refugee groups in the world, the Palestinian refugees’ dilemma is the most prolonged, unresolved refugee issue in the world; their plight has been going on for over 67 years.<sup>11</sup> Although Palestinian refugees are a recognized group of refugees by UN, the 1951 Refugee Convention has excluded them from its mandate,<sup>12</sup> as well as UNHCR.<sup>13</sup>

The issue of Palestinian refugees is one of the most debated refugee matters of all time. Since their first exodus in 1948, Palestinian refugees have not only been denied

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<sup>8</sup> UN General Assembly, *supra* note 5.

<sup>9</sup> Gil-Bazo, *supra* note 1.

<sup>10</sup> The benefits and protection measures awarded to refugees will be covered in Ch. 4 of this paper.

<sup>11</sup> Since the end of the end of British Mandate Palestine and the division of the state to two states; a Jewish and an Arab one in 1948.

<sup>12</sup> Article 1D of the 1951 Refugee Convention will be elaborately tackled in chapter 3 of this paper.

<sup>13</sup> Article 7(c) of the UNHCR Mandate will be covered in Chapter 3 of this paper.

their right to return to their state of origin,<sup>14</sup> but they are also victimized by international refugee law, as well as host states.<sup>15</sup> While the Palestinian refugee dilemma has a political side, there are several other angles to their problem, such as the right to return, preserving their human rights as a distinct group of refugees, in addition to granting them the right to a durable solution based on both international customary and convention based law. As Susan Akram aptly states:

The Palestinian refugee problem is one of the longest-lasting refugee crises in the world without a real solution in sight. Although at its core a political problem, the Palestinian refugee crisis is also a problem of legal distortion: Palestinian refugees fall into a legal lacuna that sets them outside minimal international protections available for all other refugee group in the world.<sup>16</sup>

This paper argues that Palestinian refugees fall into a protection gap based on the framework of international law they are subjected to. Since the beginning of the Nakbah in 1948, Palestinian refugees have been victimized by several factors that have assisted in prolonging of their plight. First, the international community embodied by UN for not reaching a durable solution for Palestinian refugees or seeking redress for their situation. Second, host states attitude towards Palestinian refugees. And third, the highly politicized nature of the Palestinian refugee problem has rendered redress almost impossible. This protection gap is more evident in the plight of Palestinian refugees fleeing from Syria since 2011. If there were a framework that guaranteed rights and granted protection to Palestinian refugees, then their plight would not have continued as they go through their second or third displacement.

Chapter two introduces Palestinian refugee matters in relation to UN. The chapter will introduce which UN bodies are responsible for assisting Palestinian refugees and discuss their accomplishment and how effective UN assistance has been for the past 67 years. The two main bodies that were dedicated to responding to Palestinian refugee matters are United Nations Conciliation Commission, created in 1948 and aimed at

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<sup>14</sup> LEX TEKKENBERG, *PALESTINIAN REFUGEES AND INTERNATIONAL LAW*, (Oxford University Press Inc. 1998) 1998.

<sup>15</sup> For the intent and purpose of this paper, the hosting states that are covered are Jordan, Lebanon, Syria, Egypt, as well as Turkey.

<sup>16</sup> Susan M. Akram, *Palestinian Refugees and their Legal Status: Rights, Politics, and Implications for a Just Solution*, 31 JPS 36, 36 (2002).

mediating between Arabs and Israelis post the Nakbah war in 1948 that caused the first Palestinian exodus. UNRWA on the hand has offered aid and assistance to Palestinian refugees only, this unique situation made UNRWA stand out as it was dedicated to one group of refugees only.

Chapter three tackles the relationship between Palestinian refugees and international law through examining Article 1D of the 1951 Refugee Convention, which excludes Palestinian refugees from the convention. As well as Article 7c of the UNHCR mandate. Both articles see, to exclude Palestinian refugees from the benefiting from the convention.

Chapter four defines what is referred to in literature as the protection gap. Secondly, it discusses refugee assistance as a privilege of the host states as well as concerned international institutions and not a duty towards refugees and its implications on assistance and aid granted to refugees. The chapter next answers the question of how refugees fall into a protection gap via discussing the way the 1951 Refugee Convention was first drafted *de jure* and how these laws are being manifested in aid and assistance *de facto* granted to refugees by host states.

Chapter five tackles Palestinian refugees from Syria directly, via examining their situation in both Prior to the Syrian civil war as well as their situation post the conflict in Syria in 2011. The chapter will also introduce the Palestinian refugees from Syria post the Syrian Civil War in 2011. The chapter will also highlight the way Palestinian refugees from Syria are treated by the Arab host states that are neighboring Syria, the chapter examines Palestinian refugees' situation in Jordan, Lebanon, Egypt, as well as Turkey and their reaction to the recent mass influx of Palestinian refugees into their states. The chapter also highlights host states' treatment of Palestinian refugees fleeing from Syria. The chapter concludes with recommending Temporary Protection Status as a solution for the Palestinian refugees from Syria.

## **II. United Nations and Palestinian Refugees**

UN is concerned with matters relevant to finding solutions to Palestinian refugees and eventually finding a resolution to their limbo status. A contentious matter which only became more intricate as years of the Palestinian problem prolonged with no durable solution to be reached. Sixty seven years passed since the beginning of the Palestinian plight in 1948, and hundreds of UN resolutions were issued that tackle the Palestinian refugee matters in specific, as well as the question of Palestine in general.

This chapter introduces UN bodies that are dedicated to Palestinian refugee matters and how these UN bodies reacted to the plight of Palestinian refugees throughout the years, and finally, what each UN body contributed to help assist Palestinian refugees. Initially, there was United Nations Disaster Relief Project<sup>17</sup> [hereinafter UNDPR] which was a short term project, then came along United Nations Conciliation Commission for Palestine [hereinafter UNCCP], and finally the United Nations Relief and Works Agency for Palestine Refugees in the Near East [hereinafter UNRWA]. Each of these bodies will be argued and analyzed, and introduce the impact they had on Palestinian refugees lives.

UN's first attempt to aid Palestinian refugees was the creation of UNDPR, a short term project of six days initiated in July 1948, which mainly aimed at initiating an emergency like aid to the Palestinian refugees that were gravely effected by the aftermath of the war in 1948. The UNDPR "proved substantially ineffective, given the lack of any major contributions from the wealthier Western states, and the lack of effective organization and generosity by most of the Arab states."<sup>18</sup> The fiasco attempt of finding a solution for the Palestinian refugee matter fell into the chasm of lack of cooperation, interest, and investment on behalf of the foreign states as well as the Arab ones. Hence, UN resorted in finding an alternative entity to oversee Palestinian refugee rights.

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<sup>17</sup> The UNDPR was created due to woks of Count Folke Bernadotte, who held the position of the United Nations Mediator for Palestine. Based on a UNGA Res. 186 (S-2), on May 14, 1948. His work included submitting progress reports, among his many recommendations, Bernadotte affirmed the right to return.

<sup>18</sup> Benny Morris, *The Initial Absorption of the Palestinian Refugees in the Arab Host Countries 1948-49*, in *REFUGEES IN THE AGE OF TOTAL WAR*, (Anna Bramwell ed., 1989).

## **A. UNCCP**

Subsequently, UN General Assembly set up the UNCCP in its resolution 194<sup>19</sup>. The significance of the resolution manifests in paragraph 11, which sets out the mandate for UNCCP. The new UN entity was to play a significant role in facilitating “repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.”<sup>20</sup> Originally, the newly formed state of Israel had approved on the right to return to about 100,000 Palestinian refugees. “The government of Israel would be prepared to accept the return to Israel in its present limits of 100,000 refugees.”<sup>21</sup> Israel soon after rebutted its own statement and rejected the idea all together. The Israeli position caused dissatisfaction to the Arab states and it was evident that if negotiations were to continue in such a manner, then the Palestinian refugee issue will remain unattended inevitably.

This eventually meant that the UNCCP was not successful in fulfilling its mandate. All its future endeavors were met with Israeli opposition and Arab states’ disapproval, Israel was “content to maintain the no-war, no-peace status quo,”<sup>22</sup> which meant that Palestinian refugees were to remain unprotected, without a durable solution, and at the mercy of the cooperation of Arab host states. Therefore, a different UN body was necessary to take care for the day-to-day necessities to assist Palestinian refugees until a permanent solution was found for Palestinian refugees.

## **B. UNRWA**

UNRWA was established in 1948 pursuant to United Nations General Assembly [hereinafter UNGA] Res. 302 (IV.)<sup>23</sup> UNRWA stands uniquely in international law for three reasons. Firstly, the UNRWA is the only agency under UN that is dedicated to the

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<sup>19</sup> G.A. Res. 194 (III), UN. Doc. A/RES/194 (III) (Dec. 11, 1948).

<sup>20</sup> *Id.* Para 11.

<sup>21</sup> UNCCP Historical Survey of Efforts of the United Nations Conciliation Commission for Palestine to secure the Implementation of paragraph 11 of General Assembly resolution 194 (III), U.N. Doc. A/AC.25/W/82/Rev.1 (Oct. 2, 1961).

<sup>22</sup> Benjamin Schiff, *Between occupier and occupied: UNRWA in the West Bank and the Gaza Strip*, 18 JPS 60, 60-75 (1989).

<sup>23</sup> G.A. Res. 302 (IV), UN. Doc. A/RES/302 (IV) (Dec. 8, 1949).

assistance and relief of one group of refugees solely. Secondly, UNRWA's mandate is directed towards providing relief and a works program to Palestinian refugees, and not to promote a permanent solution for Palestinian refugees or provide protection to them in contrast to the Office of the United Nations High Commissioner for Refugees [hereinafter UNHCR] mandate that aims at promoting protection of refugees. Finally, the UN did not aim to define the term 'Palestine refugee' when creating the UNRWA and left this matter in the hands of UNRWA itself. UNRWA created three different definitions of the term 'Palestine refugee'<sup>24</sup> until it came up with the definition that is still used until today in 1993, "Any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict."<sup>25</sup> UNRWA's direct mandate is set out to provide "direct relief and works programs [to] prevent conditions of starvation and distress and to further conditions of peace and stability."<sup>26</sup>

Many Arab states felt that creating a UN agency acting in benefit of the Palestinian refugees was not in a sense a privilege to Palestinian refugees but instead, it was a right. Several Arab states believed that the UN shouldered a huge burden for the Palestinians displacement and the creation of the Palestinian refugee problem in the first place. UNGA Res. 181 (II),<sup>27</sup> also known as, the 'Partition Plan' divided Mandate Palestine into two separate states: an Arab state and a Jewish state. "The plan was not accepted, however, by the Arab population of Palestine and the Arab states on the grounds that it violated the provisions of the United Nations Charter, which granted people the right to decide their own destiny."<sup>28</sup>

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<sup>24</sup> The first of the Palestine refugee definition appeared in the Addendum to Definition of a "Refugee" Under paragraph 11 of the General Assembly Resolution of 11 December 1948. A/AC.25/W/61/Add.1 (May 29, 1951). The second definition appeared in the UNRWA Operational Instruction No. 104 (Feb 18, 1952). And the final definition of the Palestine refugee appeared in the Consolidated Registration and Eligibility Instructions (CRI) (Jan. 1, 1993) Para 2.13.

<sup>25</sup> UNRWA, Consolidated Registration and Eligibility Instructions (CRI) (Jan. 1, 1993) Para 2.13.

<sup>26</sup> *Id.*

<sup>27</sup> G.A. Res. 181(II), U.N. Doc. A/RES/181(II) (Nov.29, 1947). UNGA res. 181 (II) had 13 votes against the resolution including Iraq, Saudi Arabia, Lebanon, Yemen, and Syria. See UN, Department of Public Information 1944, 5.

<sup>28</sup> TEKKENBERG, *Supra* note 14, at 12.



Mr. Karim Azkoul of Lebanon voiced the Arab states' concern in the General Assembly's 358<sup>th</sup> meeting in its fifth session on November, 27, 1950 regarding the necessity of separating the Palestinian refugees from all their counterparts, and more elaborately, the light in which Arab states' rationalized the source of the Palestinian refugee problem and the Palestine question generally:

Palestinian refugees ... differed from all other refugee. In all other cases, persons had become refugees as a result of action taken contrary to the principles of the United Nations and the obligation of the Organization toward them was a moral one only. The existence of Palestine refugees, on the other hand, *was the direct result of a decision taken by the United Nations itself*, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility.<sup>29</sup>

UNRWA was created to safeguard the Palestinian refugees' right to receive aid. Yet the UN never clearly mentioned whether this aid and relief was a right or a privilege to the Palestinian refugees. The UNRWA was established to accomplish two main purposes:

To carry out in collaboration with local governments the direct relief and works programs as recommended by the Economic Survey Mission; [and] to consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.<sup>30</sup>

UNRWA has five areas of operations in the Middle East, Jordan, Lebanon, Syria, the West Bank, and Gaza. Their operations cover "human development and humanitarian services [that] encompass primary and vocational education, primary health care, relief and social services, infrastructure and camp improvement, microfinance and emergency response, including in situations of armed conflict."<sup>31</sup> UNRWA considers itself as "a major provider of public service,"<sup>32</sup> indicating that the UNRWA aims mainly at providing temporary services for the Palestinian refugees in fields of education, health

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<sup>29</sup> G.A.O.R., 5<sup>th</sup> Sess., 3<sup>rd</sup> comm., 328<sup>th</sup> mtg., para 47.

<sup>30</sup> *Id.* para 7.

<sup>31</sup> UNRWA, What We Do, <http://www.unrwa.org/what-we-do>.

<sup>32</sup> UNRWA, PROGRAM BUDGET 2014-2015, (2013), [http://www.unrwa.org/sites/default/files/2014-2015\\_programme\\_budget\\_blue\\_book.pdf](http://www.unrwa.org/sites/default/files/2014-2015_programme_budget_blue_book.pdf).

care, and aid. It is neither in its capacity nor mandate to fully assist Palestinian refugees in integrating in Arab host states. UNRWA states that its main goals are “fostering the human development of Palestine refugees by helping them to acquire knowledge and skills, lead long and healthy lives, achieve decent standards of living, [and] enjoy human rights to the fullest possible extent.”<sup>33</sup>

UNRWA is mainly concerned with the following functions. The first is education. UNRWA has around 700 schools and approximately 479,519 students learning within the UNRWA system.<sup>34</sup> Second, UNRWA offers basic health services to about 3.1 million Palestinian refugees.<sup>35</sup> Third, about 301,015 Palestinian refugees benefit from the relief and social services that are offered by the UNRWA by assisting the refugees in receiving social protection services and extending assistance to refugees living under hard conditions<sup>36</sup> as well as basic food supplies. Next, the UNRWA assists in micro financing loans to generate income for some refugee families; around 344,493 loans have been granted.<sup>37</sup>

UNRWA has also responded to Palestinian refugee needs in times of crises in an *ad hoc* manner. The Palestinian refugees have benefited from UN resolutions<sup>38</sup> that give UNRWA leeway to limited protection measures in order to benefit Palestinian refugees. For example, during the 1967 War, UNRWA’s role was significantly more evident in protecting Palestinian refugees from hostilities.<sup>39</sup> Similarly, the UNRWA also executed similar protection measures in the 1982 Sabra and Shatila massacre.<sup>40</sup> In addition to its role during the first and second *Intifada*,<sup>41</sup> the protection mandate was mainly

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<sup>33</sup> G.A. UNRWA, What we Do, <http://www.unrwa.org/what-we-do>.

<sup>34</sup> G.A. UNRWA, Human Development Goals, <http://www.unrwa.org/who-we-are/human-development-goals>

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> The United Nations Security Council as well as the General Assembly have frequently addressed Palestinian crises with attention, yet most resolutions were not of binding nature and were considered as recommendations.

<sup>39</sup> U.N.S.C Res. S/RES/242 (1967).

<sup>40</sup> U.N.S.C Res. S/RES/521 (1982). As well as U.N.G.A. Res. A/RES/37/123.

<sup>41</sup> U.N.S.C Res. S/RES/605 (1987) and S/RES/1322 (2000).

humanitarian assistance at times of necessity. An example of the limited protection mandate is the Goulding Report<sup>42</sup> that recommended to the United Nations Security Council during the first *Intifada* the dire need to ensure Palestinian refugees the following “physical protection, legal protection, protection by the way of general assistance, and protection by publicity.”<sup>43</sup> UNRWA sought to preserve the human rights of Palestinian refugees from the Israeli forces and advocate on behalf of Palestinian refugees from illegal and discriminatory practices against them. In addition to that, the UNRWA litigated on behalf of Palestinian refugees in cases of arbitrary detentions or arrests.<sup>44</sup> Most recently, the UNRWA also executed protection measures to about 456,000 Palestinian refugees affected by the outbreak of the Syrian civil war in 2011.<sup>45</sup>

It is evident that UNRWA’s mandate has evolved over the years and has managed to provide a form of protection to Palestinian refugees in dire times of need. Yet, as long as this protection is limited to necessity and has no set mandate or obligatory execution, all Palestinian refugees will continue to suffer in light of the current mandate that does not provide any form of protection to them.

While all the functions of UNRWA follow human rights law in general, it has still failed to supply the Palestinian refugees with sustainable protection that guarantees their safety in the long run. This is the case of Palestinian refugees in Syria, who have been greatly affected by the civil war. The UNRWA has not been able to perform much in the face of host governments’ actions and protect them from ‘non-entry’ practices, or assist them in receiving aid that is mainly a right and not a privilege by host states.

Without an amendment to the UNRWA’s mandate or the international community’s acknowledgement that the Palestinian refugees fall under the 1951 Refugee Convention and the UNHCR’s mandate, all efforts to grant Palestinian refugees protection will remain futile

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<sup>42</sup> The Secretary-General, Report Submitted to the Security Council by the Secretary-General, in Accordance with Resolution 605 (1987), U.N. Doc. S/19443 (Jan. 21, 1988).

<sup>43</sup> *Id.* para 28.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

### **III. International Law and Palestinian Refugees**

While Palestinian refugees benefit from a lot of UN resolutions that aim at easing their plight and minimizing their hardship inside the borders of Palestine and outside in Arab hosting states, the same cannot be said for the 1951 Refugee Convention that directly addresses refugee matters. It is argued that the 1951 Refugee Convention as well as UNHCR has ignored the presence of Palestinian refugees. This chapter discusses the international laws that have affected the Palestinian refugees' situation in Arab host states. Firstly, the chapter discusses article 1(D) of the 1951 Refugee Conventions. Second, article 7 (c) of the UNHCR Statute that at its core mimics article 1(D) of the 1951 Refugee Convention.

#### **A. ART. 1D of the 1951 Convention**

The first part of Article 1D of the 1951 Refugee Convention reads: "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance."<sup>46</sup> This part of Article 1D is known as the 'exclusion clause' for Palestinian refugees. It excludes them from falling under the umbrella of the 1951 Refugee Convention and the UNHCR's mandate because they are already benefiting from the protection of the UNCCP,<sup>47</sup> and the assistance of UNRWA. The special wording of this clause excludes Palestinian refugees from their refugee counterparts. Using the word *or* in the last phrase "protection or assistance"<sup>48</sup> gives leeway to the 1951 Refugee Convention as well as the UNHCR to step aside and not act on behalf of Palestinian refugees. While the UNCCP was never responsible for protecting Palestinian refugees from rights such as *non-refoulement* or receiving aid and benefits as a right, it could be understood that the UNCCP was responsible for protecting their right to redress and a durable solution. Palestinian refugees are excluded from the convention on the grounds of receiving assistance from a solely dedicated entity, the UNRWA. Therefore, it is widely

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<sup>46</sup> UN General Assembly, *supra* note 5, art. 1D.

<sup>47</sup> The United Nations Conciliation Commission for Palestine. On Dec. 11, 1948, the UN Res. 194 initiated the UNCCP to mediate between Arabs and Israelis in Arab-Israeli Conflict.

<sup>48</sup> UN General Assembly, *supra* note 5, art. 1D.

argued that according to the exclusion clause, the presence of one type of rights, protection or assistance is enough to have this specific group of refugees cut out of the convention and the benefits of the protection mandate of the UNHCR and the 1951 Refugee Convention. “The shared intention of the Arab and Western states was to deny Palestinians access to the Convention-based regime so long as the United Nations continues to assist them in their own region.”<sup>49</sup>

The exclusion clause has been debated for many years. Many states have used it to justify failure of addressing the Palestinian refugee matters to finding a permanent solution such as granting asylum, resettlement, and a more full integration into host states’ societies.

The second half of Article 1D of the 1951 Refugee Convention reads: “When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.”<sup>50</sup> The significance of this clause is that under certain circumstances it entitles Palestinian refugees to the benefits of the 1951 Refugee Convention as well as the UNHCR’s mandate. This clause introduces an exception to the exclusion, and is usually referred to as the ‘inclusion clause’. This part of the article clearly states that if “protection *or* assistance has ceased for any reason”<sup>51</sup> then the mentioned excluded refugee group is *ipso facto* included in the 1951 Refugee Convention and shall benefit from the protection of the UNHCR.

Similar to the *or* in the exclusion clause, the inclusion clause has a similar *or* that benefits the Palestinian refugees once read and interpreted in a certain light. The ‘inclusion clause’ *or*, entails a direct inclusion of Palestinian refugees generally. Especially that the UNCCP, the entity responsible for the Palestinian refugees’ protection in preserving their right to redress, has ceased its functions and no longer seek out

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<sup>49</sup> JAMES C. HATHAWAY, LAW OF REFUGEE STATUS, 208, (Butterworths, 1991) (1991).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

reparations for Palestinian refugees. That being said, and by virtue of the meaning of the *or* in the ‘inclusion clause,’ then the absence of either protection or assistance, makes the targeted refugees eligible for the benefits under the UNHCR’s protection umbrella, and included in the 1951 Refugee Convention.

A different approach was taken into consideration when interpreting the ‘inclusion clause.’ Some interpret it that it only applies to the Palestinian refugees when UNRWA activities cease to exist, meaning, when the Palestinian refugees no longer have a special agency to address their interests of assistance and aid. While others have interpreted the clause by understanding that Palestinian refugees will be included in the 1951 Refugee Convention and UNHCR’s Mandate when this particular group of refugees leaves the area of operations of UNRWA and seek refuge elsewhere, where UNHCR is the only refugee specialized entity and UNRWA has no geographical mandate.<sup>52</sup> “Palestinian refugees were thus singled out from other refugees in two ways. First, a special protection and assistance plan composed of UNCCP, UNRWA and UNHCR was established. Which was composed of UNRWA’s mandate to relief Palestinian refugees from their displacement and loss of livelihood post their mass exodus in 1948. Second, a different and separate analysis based on Article 1D applies in the determination of the status of Palestinians as refugees.”<sup>53</sup> This is what has been interpreted repeatedly by UN bodies as well as host states.

#### **B. Article 7 (c) UNHCR Statute**

Similar to the 1951 Refugee Convention’s exclusion clause, the UNHCR statute includes one under Article 7 (c). The article reads: “Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person: Who continues to receive from other organs or agencies of the United Nations protection or assistance.”<sup>54</sup> The same analogy applies to the statute of the UNHCR in this article, similar to the one made for the 1951 Refugee Convention ‘exclusion clause.’ There is

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<sup>52</sup> BADIL Resource Center, Closing Protection Gaps, 2<sup>nd</sup> Edition, 42 (Feb.2015).

<sup>53</sup> *Id.*

<sup>54</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, Dec. 14, 1950, A/RES/428(V).

clear exclusion of the Palestinian refugees who are registered with UNRWA and receiving aid from one of UNRWA's operating locations.

#### IV. Protection Gap Theory

There are several benefits that are awarded to refugees worldwide. These benefits are guaranteed by the 1951 Convention as well as international law, both customary and convention based. The refugee benefits and standards of protection are elaborated in the 1951 Convention, beginning with a “non-discrimination”<sup>55</sup> article, all the way up to “naturalization”<sup>56</sup> opportunities for refugees in host states. The 1951 Refugee Convention covers an array of benefits that mainly aim at protecting refugees in host states in addition to preserving their human rights.<sup>57</sup> Having said that, there still is not a clear term that defines what protection means to refugees. It is clear to say that at minimum, refugee status grants protection from expulsion from host states, when other non-citizens are subjected to.

It is argued that protection is measured by its absence. Hence, if refugees are excluded from customary international law benefits, and convention based international law, then refugee-hosting states will fall into a protection gap, based on how host states understand these articles and the way these articles are being interpreted and practiced in reality. Moreover, a protection gap can be revealed by excluding a category of refugees for one reason or another from the benefits of the 1951 Refugee Convention, international law, as well as international human rights law.

This chapter aims at defining the protection gap as the distance between the benefits actually enjoyed by refugees and a threshold for protection awarded to refugees worldwide by virtue of established rules of international law included in binding treaties and customary international law. This threshold will entail the right to *non-refoulement* as well as receiving aid and benefits in a right-based approach and not as a privilege. The chapter then explains how refugees fall into a protection gap theoretically by discussing the ways laws are being interpreted, *de jure*, as well as examining the practices refugees are subjected to in host states, *de facto*.

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<sup>55</sup> UN General Assembly, *supra* note 5, Article 3.

<sup>56</sup> *Id.*, Article 34.

<sup>57</sup> The Articles that entail the benefits and standards of protection for refugees in the 1951 Refugee Convention are 3 - 5, 7, 8, 10 - 24, and 26 - 34.



## A. Protection Gap Defined

### 1. Non-Refoulement

Looking at the principle of *non-refoulement* from a perspective that best serves refugees, it is safe to say that it “has attained the normative value of *jus cogens*.”<sup>58</sup> Consequently, refugee hosting states cannot derogate from this rule and no reservations can be made or permitted on any of the articles that engulf the rule of *non-refoulement* in any convention that embodies it. *Non-refoulement* is mentioned in a number of contexts that both directly and indirectly tackle refugee benefits and assistance. Highlighting some of these contexts will elaborate on the importance of having the rule of *non-refoulement* as the base minimum of protection for refugees and the first element of protection threshold identified in this paper.

Treaty law is the first, but not the only, context in which the rule of *non-refoulement* is mentioned. For example, the 1951 refugee Convention mentions the rule of *non-refoulement* in its preamble as well as Article 33 Prohibition of Expulsion or Return (“refoulement”). The article reads, “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>59</sup> *Non-refoulement* is also proscribed in United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under Article 3<sup>60</sup> in addition to Article 7 in the International Covenant on Civil and Political Rights.<sup>61</sup>

The second context, in which the rule of *non-refoulement* is mentioned, is international human right law. The role of human rights law is to protect refugees and preserve their rights, not only those who fall into the definition of refugees, but even those who do not fall under the scope of the refugee definition in the 1951 Refugee

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<sup>58</sup> Jean Allain, The *Jus Cogens* Nature of *Non-Refoulement*, International Journal of Refugee Law, 2001 13 (4) 533 – 558.

<sup>59</sup> UN General Assembly, *supra* note 5, Article 33.

<sup>60</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1948, A/RES/39/46.

<sup>61</sup> The International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171.

Convention. It is even believed that “human rights law is the primary source of refugee protection, while the Geneva Convention is bound to play a complementary and secondary role.”<sup>62</sup> While refugee law and its executing bodies offer a precise and exclusive measure of treatment to refugees, “international human rights law strengthens that legal framework by allowing refugees to invoke the protection of norms whose scope of application may be wider than those in the refugee regime.”<sup>63</sup> One example is the prevention of *refoulement* in situations where there is a genuine threat to refugee lives in addition to torture, punishment, and inhumane treatment. Human rights and refugee matters are becoming more intertwined whereby human rights law applicability to refugees is becoming “complementary protection” to the 1951 Refugee Convention as well as refugee law in general. “This development eventually led to the consolidation of the principle of *non-refoulement* and to the conceptualization of refugee protection under international human rights law as complementary protection.”<sup>64</sup>

The third entity which is considered along with the rule of *non-refoulement* is the UNHCR. The UNHCR is the primary body acting on behalf of the UN to assist in all matters relevant to the refugee situation; its status stipulates that the UNHCR is “acting under the authority of the General Assembly [and] shall assume the function of providing international protection ... and of seeking permanent solutions for the problem of refugees.”<sup>65</sup> In order to fulfill its mandate, the UNHCR requires the cooperation of refugee hosting states since one of its core mandates is to request the states’ assistance and “compliance with their international obligations towards refugees and asylum-seekers.”<sup>66</sup> The UNHCR’s role can never be fully implemented if signatory parties to the 1951 Refugee Convention apply non-entry rules to refugees seeking safety in host states.

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<sup>62</sup> Vincent Chetail, “Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law”, (R. Rubio-Mari’n ed.), Human Rights and Immigration, Oxford, Oxford University Press, 2014, 19–72, at 28.

<sup>63</sup> Brian Gorlick, Human Rights and Refugees: Enhancing Protection through International Human Rights Law, Nordic Journal of International Law, 69, 2000, 117–177.

<sup>64</sup> Gil-Bazo, *supra* note 1.

<sup>65</sup> U.N.G.A, Statute of the Office of the United Nations High Commissioner for Refugees, Dec. 14, 1950, A/RES/428(V).

<sup>66</sup> *Id.*

Stemming from this notion states are not free to reject refugees at the frontier and it has been argued that this rejection does amount to refoulement.<sup>67</sup>

Application of the rule of *non-refoulement* is the first element in guaranteeing refugees' assistance and aid in hosting states, and consequently preserving their right into protection. This rule is the first threshold which protection is evident. Hence, it is the first indication of a protection gap if absent.

## **2. Assistance: rights-based or privilege**

Similar to the rule of *non-refoulement*, granting refugees aid as a right and not a privilege is the second marker of protection to refugees. States and international agencies could provide refugees and displaced persons with different forms of assistance but the existence of assistance is not per se a marker of protection. This assistance could be, for host states, an exercise of sovereign privilege that does not correlate with any international law duty towards the recipients of aid. In this case, one can hardly claim that refugees and displaced persons are protected, because host states could decide unilaterally to suspend aid for moral, humanitarian, or political reasons. Alternatively, taking serious guarantees stipulated in binding international human rights instruments, refugees and displaced persons could receive assistance as a matter of right that correlates with internal law duties on host countries. Only when refugees receive assistance as a matter of right that one can plausibly say that they are protected under international law.

In this sense, states fall into a protection gap when they deny assistance and aid to refugees as a right. States may have a different definition of what assistance and aid could mean when hosting refugees. Furthermore, states can place reservations on one or more of the protection articles mentioned in the 1951 Refugee Convention.<sup>68</sup>

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<sup>67</sup> See E. Lauterpacht and D. Bethlehem, "The scope and content of the principle of nonrefoulement: opinion", in E. Feller, V. Trk and F. Nicholson (eds.), *Refugee protection in international law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003), 87-177, at 113-115

<sup>68</sup> This part will be elaborated on in Section B of this chapter, how do refugees fall in a protection gap? *De Jure*.

If refugee-hosting states grant refugees assistance from a privilege approach, then states can revoke assistance on any grounds and at any time, leaving refugees vulnerable and open to abuse by host states. Due to the fact that refugees' right to seek aid and assistance is not legally binding on host states, this adds to the turmoil of refugees in living in fear and under the indirect oppression of the host state. Consequently, if aid is not given a legal context and a binding nature then it will not be a right per se and will always remain a privilege that entails more difficulties for refugees than solutions. Hence, as long as states have a right and not a duty to perform assistance and aid to refugees, there is always a possibility both refugees and states may fall into a protection gap.

### **B. How do refugees end up in a protection gap?**

There are two ways that refugees might fall into a protection gap: *de jure* or *de facto*. While the former might be debatable and is controversial due to states' interpretations of customary international law, or the reservations made by some contracting states on convention based international law, the latter is rarely questioned, because it entails practices subjected on refugees at a ground based level.

#### **1. De Jure**

International law was initially drawn to correct mistakes that happened in history post World War I and II as a form of cleaning up the hazards of war and reducing the pain inflicted on civilians of states that had to live through the atrocities of these wars.

Beginning with the League of Nations,<sup>69</sup> then its successor, the UN, both entities were keen on improving human rights in the world. The UN's Charter states that it aims at:

sav[ing] succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.<sup>70</sup>

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<sup>69</sup> The League of Nations was an organization founded on Jan 10, 1920 as a result of the Paris Peace Conference that ended the First World War.

<sup>70</sup> United Nations, Charter of the United Nations, Oct. 24, 1945, 1 UNTS XVI.

It is customary that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”<sup>71</sup> Therefore, it is logical to assume that states need to interpret these articles as well as abide by them to the best of their abilities, in addition to fulfilling their obligations in good faith. Consequently, states can fall into a refugee protection gap when they fail to interpret refugee law in a manner that best serves refugee interests and their status is restricted due to local laws or the lack of local laws that protect the rights granted to refugees by the 1951 Refugee Convention. Thus, it is safe to claim that if a state has not adopted local refugee laws, then it should use the 1951 Refugee Convention and its 1967 Protocol as the backbone of its related refugee laws as well as a method for implementation and treatment of refugees in its state.

Another aspect of the *de jure* protection gap is the reaction of some states to the 1951 Refugee Convention. The reaction varies from placing reservations on some of the articles, to redefining some of the terms and provisions to better cater to the host states benefits regardless of the “greater good” of providing assistance, aid, and protection to refugees. It is clear that reservations to the 1951 Refugee Convention are permitted, signatory states are allowed to make reservations on some articles as stated in the convention itself. The host states fulfillment of these reservations and their implications move refugees from falling into the protection gap from *de jure* to *de facto*.

## **2. De Facto**

Interpreting the law is as important as the rule of law itself. This means that the practices of some refugee hosting states need to mirror their understanding of the rule of law and their abidance by customary international law as well as convention based international law. Based on the principles of the 1951 Refugee Convention that aims to serve all refugees in an undiscriminatory manner regardless of refugees’ ethnicity, religion, or political and social affiliation, and all benefit from the convention principles in a “rights-based” manner,<sup>72</sup> yet this is not the case for *all* refugee groups. There have been

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<sup>71</sup> Vienna Convention on the Law of Treaties, 1155 UNTS 331, May 23, 1969 Art. 31(1)

<sup>72</sup> Gil-Bazo, *supra* note 1.

registered incidents of some refugee groups falling in a *de facto* protection gap by some states' practices exclusively targeting them.

This exclusion highly depends on how hosting states implement the provisions of the 1951 Refugee Convention based on reservations made to the convention and its protocol. For example, the state of Australia made the following reservation regarding Article 17 of the 1951 Refugee Convention Wage-Earning Employment<sup>73</sup> “not as a binding obligation, but merely as a recommendation.”<sup>74</sup> This reservation mirrors Australia's demeanor in creating job opportunities for refugees as well as hindering the process of their socio-economic integration in Australian society.

Finland, on the other hand, made reservation to Article 24 of the 1951 Refugee Convention, stating that; “A reservation to article 24, paragraph 1 (b) and paragraph 3 to the effect that they shall not be binding on Finland.”<sup>75</sup> Article 24 tackles matters of Labor Legislation and Social Security. In the case of Finland, the state did not believe that refugees are entitled to the benefits of social security or labor legislation as Finnish citizens. This limitation also puts laboring refugees at risk of exploitation as well as without reparation in the event of work injuries or hazards.

States base their reservations on their understanding of the rule of law as well as which articles conflict with their constitution or interests whether for the states themselves or at times political interests. While some states might use the excuse of security for their reservations and amendments, other states just declare that a certain article does not apply to them without any further explanation. For example, the state of Israel explicitly made the following reservation on the 1951 Refugee Convention, using one simple statement; “Articles 8 and 12 shall not apply to Israel.”<sup>76</sup>

Another example of how reservations made by states can affect the *de facto* treatment of refugees is the reservation made by Turkey to the Protocol Relating to the

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<sup>73</sup> UN General Assembly, *supra* note 5.

<sup>74</sup> UNHCR, Reservations and Declarations to the 1951 Refugee Convention, available at <http://www.unhcr.org/3d9abe177.html>.

<sup>75</sup> *Id.* at 8.

<sup>76</sup> *Id.* at 9.

Status of Refugees that states; “according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe.”<sup>77</sup> The Turkish reservation indicates that it has limited its obligation to refugees that are a result of a conflict in Europe only. This meaning that entering the Turkish state are not going to be granted refugee status in Turkey, or the ability to seek asylum, resettlement, or social and economic integration in Turkey, unless they enter from Europe. Yet, Turkey has been more than welcoming to refugees escaping the Syrian Civil War both Palestinian refugees from Syria as well as the Syrian refugees. Though it has not granted them refugee status, it has granted them Temporary Refugee Status<sup>78</sup> and eased their passage on the Syrian/Turkish borders.

A more elaborate example of both *de jure* and *de facto* refugee protection gap is the plight of Palestinian refugees fleeing the Syrian Civil War. This is tackled thoroughly in the following chapter.

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<sup>77</sup> United Nations, Treaty Series, Protocol Relating to the Status of Refugees, Jan 31, 1967, vol. 606, p. 267.

<sup>78</sup> Temporary Refugee Status will be discussed in Chapter 5 of this paper.

## **V. Palestinian Refugees from Syria: fitting into the Protection Gap Theory**

In the light of the theory of the protection gap discussed in the previous chapter, this chapter aims at shedding further light on the gravity of the protection gap from a *de facto* perspective in the Palestinian refugee context. Currently, Palestinian refugees from Syria suffer from discriminatory policies particularly targeted at them by Syria's neighboring states, which are shouldering the burden of refugees post the 2011 Syrian Civil War

The question of whether there was a protection gap based on *de jure* examination prior to the breakout of the Syrian civil war or not will be answered through examining the theory of the protection gap from a scholarly point of view. The debate revolving around the existence of the protection gap has been going around long prior to the Syrian Civil War.

The current situation of the Palestinian refugees from Syria in host states varies immensely. Jordan, Lebanon, Egypt, and Turkey have all shared in bearing the burden of the Syrian civil war refugees' post 2011. In most cases, these host states varied in their level of cooperation, towards the plight of the refugees' whether Syrian or Palestinian. In order to highlight the fact that the Protection Gap is a *de facto* status for the Palestinian refugees from Syria, an examination of the hosting states' reaction towards their presence needs to be highlighted.

This chapter begins with opinions and arguments of several human rights scholars and state their arguments and opinions on the concept of Palestinian refugees falling into a protection gap. The chapter also discusses the situation of Palestinian refugees in Syria prior to the breakout of the Syrian civil war in 2011 and how Palestinian refugees lived in Syria, and what their rights and duties were towards the Syrian society and government. The chapter will clarify the situation Palestinian refugees are in since the beginning of the Syrian civil war in 2011, both in Syria as well as Host states. This chapter also includes host states' practices in favor of / or against Palestinian refugees whom are facing their second or third forced displacement. Some host states' reaction to Palestinian refugees from Syria mirror the protection gap Palestinian refugees are currently subjected to.



These host state practices will be discussed by examining the rule of *non-refoulement*, the clarity of the discriminatory policies against Palestinian refugees from Syria, and the denial of refugee status to Palestinian refugees in particular in some of the host states. Finally, the chapter concludes by weighing the importance of granting Palestinian refugees Temporary Protection Status and its benefits to both host states as well as the refugees.

### **A. Is there a Protection Gap for Palestinian Refugees?**

There are many voices that argue the concept of the “protection gap.” Not all believe in its existence while others are strong defenders of the concept and blame the Palestinian refugees’ turmoil on its existence, in addition to demanding redress for Palestinian refugees.

One of the strong voices in claiming the presence of the protection gap theory is Susan Akram. She believes that the “protection gap” is evident in the Palestinian refugee situation in every aspect of their lives and is present everywhere they reside; “[from] basic human and refugee rights to the search for durable solutions.”<sup>79</sup> Akram argues that Palestinian refugee matters have been handed to UNRWA where it has become the “face of the plight.”<sup>80</sup> Unfortunately, this representation is weak in nature and limited in resources, simply because its protection ability is “virtually nonexistent.”<sup>81</sup> Akram elaborates on the dimensions of the “protection gap” beyond UNRWA’s incapability to claim redress for the Palestinian refugees. In countries outside UNRWA mandate, the Palestinian refugee status is even more vulnerable because of the “political marginalization, general lack of knowledge in the specifics of the Palestinian refugee case, and lack of the PLO<sup>82</sup> involvement in protecting individual rights of Palestinians.”<sup>83</sup> This means that the situation of Palestinian refugees in Diaspora is handled on a case-by-case base. This has resulted in instability for the Palestinian

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<sup>79</sup> Akram, *supra* note 16, at 43.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Palestine Liberation Organization, founded in 1964 and aims at liberating the Palestinian occupied territories. Currently it is recognized as the official government in the West Bank, as well the recognized represent to the West bank in the United Nations.

<sup>83</sup> Akram, *supra* note 16, at 43.

refugee, and left these refugees at the mercy of each state's interpretation of the 1951 Refugee Convention. Yet, according to Akram, the most grievous repercussions of the "protection gap" are seen in Middle East countries that are under UNRWA's mandate. "Arab states ... grant Palestinians very few benefits as a matter of *right*; whatever benefits they might grant are best understood as *privileges* for Palestinians – and thus revocable at any time for any reason."<sup>84</sup>

These practices have placed the Palestinian refugees at the mercy of the Arab states' varying levels of cooperation and understanding of the Palestinian predicament; in most cases, obstacles of a political nature confront this cooperation, and security claims made against their benefit. These practices have resulted in the hindering of the opportunities for Palestinian refugees to function and survive in these host states. In most Arab host states such as Lebanon and Egypt, for example, Palestinian refugees are denied work, freedom of movement, and family reunification. Akram explains that all durable solutions for Palestinian refugees will never see the light of day owing to the reason that there is no protection mandate that covers the Palestinian refugees. Accordingly, the solution revolves around amending this gap through encompassing the Palestinian Refugees into the 1951 Refugee Convention as well as UNHCR's mandate.

Jaber Suleiman also believes that the protection gap is present and evident in the case of Palestinian refugees. The gap's existence is a result of a number of reasons all revolving around the failure of UN entities to successfully address the Palestinian problem. Suleiman pins the blame on UNCCP, UNRWA, as well as UNHCR for their complete failure in attempts to compensate refugees as well as reach a durable solution, for their lack of protection mandate, and for their irrational exclusion of Palestinian refugees from their mandate in the case of the UNHCR. Ergo, the solution for Suleiman mainly lies in the UN as an international entity that must be held responsible for amending the situation of Palestinian refugees. "[T]he collapse of the UNCCP protection, limited protection provided by UNRWA, and inadequate and limited protection afforded

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<sup>84</sup> *Id.* at 44.

by UNHCR resulted in serious protection gaps for Palestinian refugees with respect to systematic protection of day-to-day rights and the search for durable solutions.”<sup>85</sup>

Reem Salahi on the other hand, relates the protection gap to the failure of UN bodies to sanctify protection as a right for Palestinian refugees. It is notable that she addresses these entities “in good faith” and states “while Palestinian Refugees originally had a special regime that provided both protection through the UNCCP and assistance through UNRWA, they currently receive only the most basic assistance and short-term protection. Presently, the lack of formalized measures ensures that the approximately 7.5 million Palestinian refugees strewn throughout the Arab world will never have any form of resolution.”<sup>86</sup> Salahi refers to the *ad hoc* and mediocre protection provided by the UNRWA as “passive protection”<sup>87</sup> in the sense that this protection was limited to increasing the number of international staff dedicated to protecting the Palestinians from Israeli authorities during the first intifada in 1988 and with little tangible effect. Additionally, the nature of UNRWA’s mandate, even though it has expanded throughout the years, is still somewhat restricted in terms of protection which leads to the absence of a durable solution. Salahi concludes that “even with UNRWA’s attempts to step up and provide passive protection, it has failed to fill the protection gap that has resulted with the incapacitation of the UNCCP.”<sup>88</sup>

Neil Gabiam is among the voices that agree with Akram. He argues that the Palestinian refugee rights can be discussed from a human rights perspective in the sense that they are “negotiable”<sup>89</sup> and “amendable”<sup>90</sup> to encompass Palestinian refugee rights in their work-frame, which can bridge the gap between the rule of law and what is really practiced.

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<sup>85</sup> Jaber Suleiman, *Marginalized Community: The Case of Palestinian Refugees in Lebanon*. Development Research Center on Migration, Globalization and Poverty University of Sussex. 2006.

<sup>86</sup> Reem Salahi, *Reinterpreting Article 1D: Seeking Viable Solutions to the Palestinian Refugee Anomaly*, 1 Berkeley J. Middle E. & Islamic L. 7 (2008).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Neil Gabiam, *Negotiating Rights: Palestinian Refugee and the Protection Gap*, Anthropological Quarterly, Volume 79, Number 4, Fall 2006 pp. 717 – 730.

<sup>90</sup> *Id.*

Contradicting these voices, are those who do not believe in the concept of a protection gap. One of these voices is B. Scott Custer, UNRWA's former Head of the International Law division. He affirms the fact that even if the UNRWA mandate does not specifically mention the term "protection" it has managed to do so, out of its own sense of responsibility and out of the United Nations General Assembly's recommendations to improve the Palestinian refugees situation and ease their plight. Custer expresses his notions regarding the extensive use of the rhetorical term "protection gap" as follows: "protection gap is outdated, as UNRWA's protection has grown since the 1980s and, while established without one, it now has an explicit protection mandate."<sup>91</sup>

Michael Kagan sides with Custer in that argument and expresses that UNRWA has achieved its full capacity and fulfilled their mandates as best as they could. "UNRWA made the strongest possible case for protection of the Palestinian refugees. That is probable the most that a UN agency can do."<sup>92</sup> Kagan argues that the concept of protection is over ambitious at times, and beyond the capacity of UN bodies to handle. He leans towards the need for a more elaborate understanding of what proper protection for the Palestinian refugees might look like in order to address the matter of Palestinian refugee protection in a more feasible manner. Additionally, Kagan points out that the UN, as an entity, also has limited power and capacity in the Middle East. Thus, Kagan sides with the notion that there is no "protection gap" for Palestinian refugees and that the designated entities that are responsible for handling the situation are functioning to their fullest capacity.

These opinions on the protection gap theory are of substantive prominence, mainly because current international propositions and solutions dedicated to the Palestinian refugees have neither allowed redress nor coped with the refugees' current

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<sup>91</sup> B. Scott Custer. "UNRWA: Protection and Assistance to Palestine Refugees," *Refugee Survey Quarterly* (2009).

<sup>92</sup> Michael Kagan, *Is there Really a Protection Gap? UNRWA's role vis-à-vis Palestinian Refugees*. *Refugee Survey Quarterly*, Vol. 28, No. 2 & 3: 511 – 530.

situation. In fact, they have aided in prolonging their dilemma. Therefore, the present mandates are in need of amendment.

In my opinion the concept of a protection gap exists in laws and is echoed in the practices of international entities that address Palestinian refugees' matters. Mimicking Akram's opinion, a valid solution for the protection gap could lie in better interpreting UNHCCR's mandate, especially Article 1D that is used for excluding the Palestinian refugees from its mandate. In addition, Suleiman connects the protection gap to the failure of UN bodies to act in full support for and capacity to benefit Palestinian refugees. This notion is also correct relating to the fact that if UNRWA's mandate was amended to engulf protection clauses that would benefit the Palestinian refugees in the long run, it would eventually lead to a permanent solution and redress. Moreover, a protection gap exists in the Palestinian refugee context due to manner in which assistance and aid is granted to this particular group within UNRWA mandate. It is apparent that UNRWA provides only basic aid to Palestinian refugees, such as food, health care, and education and nothing else. They are merely given enough sustenance to stay alive, yet with no hope of maintaining a livelihood or growth. This is evident in Salahi's argument where she labels UNRWA's protection as "passive,"<sup>93</sup> and prolonging the problem instead of finding redress for it. The Palestinian refugee rights can also be addressed from a human rights perspective. Hence there is a strong stand for amendments that would result in a better set of laws that would do justice to the Palestinian refugees' plight. This notion is rationalized by Gabiam's argument; where he too believes that there is hope for a change in the set of laws that would improve Palestinian refugee's situation if these laws were amended as well as reinterpreted in a different light all together.

In conclusion, the concept of a protection gap is quite evident in the Palestinian refugee situation. This gap can be pinned on the laws that tackle Palestinian refugee matters directly, which are mirrored vies-a-vies the practices Palestinians are subjected to in reality. This leads us to the arguments of those who do not believe in the existence of a protection gap in the first place. Custer feels that the term protection is overused and

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<sup>93</sup> Salahi, *supra* note 86.

“outdated”<sup>94</sup> and that UNRWA is doing its job to its fullest capacity. This is similar to Kagan’s opinion regarding the protection the UNRWA can provide to Palestinian refugees within its mandate and capacity. Either way, the protection gap does exist if not by law, than in practice. In addition, in order for the practices to become more attentive towards Palestinian refugee needs, these laws eventually need modification. Thus for Palestinian refugees, tackling the protection gap concept from both a *de jure* and a *de facto* perspectives is essential for reaching a more permanent solution.

### **B. Palestinian Refugees in Syria Prior to 2011**

Arguably, both Syria and Jordan are the only Arab states that have granted Palestinian refugees citizen-like rights and have helped them to establish a relatively stable and normal life. It is over 63 years since the first waves of Palestinians left Mandate Palestine in 1948 and sought refuge in Syria as well as other Arab states. Syria has been more than forthcoming in its support for the Palestinian refugees’ fragile situation as well as its position on the state of Israel and the Palestinian’s right to return. Syria eased the Palestinian refugees’ integration into Syrian society and aided them in making a stable life in Syria away from Palestine.

Prior to the civil war outbreak in Syria in 2011, approximately 526,744<sup>95</sup> Palestinian refugees were registered with the UNRWA in Syria and living in nine refugee camps.<sup>96</sup> The Syrian government treated the Palestinian refugees “favorably, relative to its Arab neighbors.”<sup>97</sup> The Palestinian refugees had a stable life in the refugee camps in Syria; their socio-economic integration with the Syrian nationals was not a difficult one; “together with Jordan, Syria afforded the greatest amount of civil, economic, social, and cultural rights to their Palestinian refugee population.”<sup>98</sup> Palestinian refugees residing in Syria had equal access to healthcare, education, and the job market, in equal opportunities as the Syrian nationals did. The Syrian government had initiated attempts to administrate

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<sup>94</sup> Custer, *supra* note 91.

<sup>95</sup> UNRWA, *Where We Work: Syria* (2015) Available At: <http://www.unrwa.org/where-we-work/syria>

<sup>96</sup> *Id.*

<sup>97</sup> Nabil Mahmoud As-Sahly, *Profiles: Palestinian refugees in Syria*, 4 Al-Majdal BADIL Resource Center 1, 2 (1999).

<sup>98</sup> *Id.*

the Palestinian refugee affairs and did not leave matters up to UNRWA alone, the Syrian General Authority for Palestinian Arab Refugees [hereinafter GAPAR] was responsible for managing the refugee camps, and aimed at both, maintaining connection to UNRWA's activities, as well as keeping the political actors of the Palestinian Front in check.<sup>99</sup>

Initially, at the time of the Palestinian refugees' arrival in 1948, Syria was "under populated, and many economists saw the new arrivals as an asset for development."<sup>100</sup> This meant that Syria was not threatened by the arrival of the Palestinian refugees. Therefore, and due to its demographic, social and economic circumstances, it began to foster new laws that tackled matters concerning the Palestinian refugees residing in Syria, in order to make the best of their presence as well as to ensure their rights while maintaining their Palestinian identity.<sup>101</sup> These laws finally integrated Palestinian refugees into Syrian law giving them "virtually equal footing with Syrian nationals."<sup>102</sup> Hence, Palestinian refugees in Syria were able to act as Syrian citizens by law and by practice, with a few exceptions on land ownership and buying second homes in addition to citizenship and the right to vote.<sup>103</sup> Other than these, the Palestinian refugee population in Syria was fully integrated into the Syrian one.

### **C. Palestinian Refugees in Syria Post 2011**

Palestinian refugees residing in Syria have been seriously affected by the outbreak of the Syrian civil war in 2011. Feuding groups attacked Palestinian refugees and many refugee camps all over Syria turning some into battle zones. According to UNRWA's facts and figures covered in the Syrian Crisis, a total of 343,000 Palestinian refugees from Syria have been directly affected since the outbreak of the civil war.<sup>104</sup> About 180,000

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<sup>99</sup> Tekkenberg, *Supra* note 14.

<sup>100</sup> Don Peretz, *Palestinian Refugees and the Middle East Peace Process* 66 (Washington, D.C., United States Inst. Of Peace Press 1993) (1993).

<sup>101</sup> Tekkenberg, *Supra* note 14.

<sup>102</sup> *Id.*

<sup>103</sup> Nidal Bitari, *Yarmuk Refugee Camp and the Syrian Uprising: A View from Within*, 43 *Journal of Palestinian Studies*, 62, 61-62 (2013).

<sup>104</sup> UNRWA, *Displacement Facts and Figures – Syria Crisis*, May 2015, <http://www.unrwa.org/syria-crisis>.

Palestinian refugees have been internally displaced,<sup>105</sup> whereas 44,000 refugees are located in Lebanon, 15,000 in Jordan, and 4000 in Egypt as for Turkey, the number is still uncertain.<sup>106</sup> While these numbers may or may not increase, the Palestinian refugees from Syria are facing harsher living conditions by days whether inside Syria or in the previously mentioned host countries with the exception of perhaps Turkey as the chapter will clarify shortly.

The neutrality of the Palestinian refugees in Syria was not taken into consideration and they have been forcibly dragged into a fight that did not concern them. One of the most notable attacks on Palestinian refugee camps was the attack on the Latakia refugee camp by Bashar Al-Assad's forces, whereby "gunships, tanks, and armored vehicles forced more than 5000 Palestinians to flee from the camp."<sup>107</sup> The news travelled fast with the international press highlighting the gravity of attacking the neutral, unprotected, and aid-reliant refugees.<sup>108</sup> This reflected negatively on the Syrian government. Filippo Grandi, UNRWA Commissioner General at the time, affirmed the dire necessity of keeping Palestinian refugees out of the struggle and respecting their status as refugees in Syria. Hence, he "publicly appealed to Palestinian refugees in Syria to remain neutral and called upon all parties to respect their neutrality."<sup>109</sup>

Another attack that targeted the Yarmouk refugee camp in Damascus caused even more casualties and damage. On December 16<sup>th</sup>, 2012, a Syrian jet was responsible for killing tens of civilians,<sup>110</sup> and causing a reduction of the refugee camp population from "160,000 refugees to about 30,000 inhabitants."<sup>111</sup> This airstrike on Al-Yarmouk

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Press Association, *Syria Assault on Latakia Drives 5000 Palestinians from Refugee camp*, The Guardian, Aug. 15, 2011, <http://www.theguardian.com/world/2011/aug/15/syria-palestinians-latakia-assault>.

<sup>108</sup> According to the UNRWA Syria Crisis report, the Agency has allocated 132,400,000 US dollars to aid Palestinian refugees in the nine registered refugee camps around Syria, while this number is high; UNRWA needs double this amount to aid all the Palestinian refugees in light of the dilemma caused by the civil war.

<sup>109</sup> *UNRWA Chief Advises Palestinians in Syria to Remain Neutral*, KUWAIT NEWS AGENCY, Sep. 3, 2012, <http://www.kuna.net.kw/ArticleDetails.aspx?id=2226160&language=en>.

<sup>110</sup> Bitari, *supra* note 49, at 61.

<sup>111</sup> Gavin David White, *Conflict in Syria Compounds Vulnerability of Palestine Refugees*, 44 FORCED MIGRATION REVIEW 79, 79 (2013).



refugee camp among other targeted attacks have resulted in “its destruction, the death of hundreds, and the displacement of 95% of its inhabitants.”<sup>112</sup>

As matters have escalated in Syria and fighting has become a more serious threat to Palestinian refugees, it has become a dire necessity out of self-preservation for them to seek refuge in neighboring countries like, Jordan, Lebanon, Egypt, and Turkey. Each of these host states have had to deal with Syrian nationals whom have also now become refugees and seeking protection from the war. Therefore, the host states have had to deal with both refugee groups pursuing safety from the war in Syria.

### **1. Palestinian refugees in Lebanon**

Lebanon’s legislation hinders accepting more Palestinian refugees than it already hosts since Lebanon is already home to almost 500,000<sup>113</sup> Palestinian refugees. Palestinian refugees escaping the war in Syria face hardships on entering Lebanon. Since August 8, 2013, Human Rights Watch has repeatedly reported that the Lebanese borders deliberately deny Palestinian refugees entry into Lebanon.<sup>114</sup> Since this Human Rights Watch report, there were a few policy changes regarding Palestinian refugees. While these changes in favor of the Palestinian refugees did not last long another Human Rights Watch report accentuated the denial of entry to Palestinian refugees from Syria in another report May, 2014.<sup>115</sup>

Gebran Bassil, Lebanon’s Foreign Minister, has clearly stated the Lebanese principles behind the governmental restrictions on the flow of refugees from Syria to Lebanon:

When we say we do not want the displaced Syrians and Palestinians to take our place, this needs to be backed up by action. They are taking the place of the

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<sup>112</sup> Nora Berneis and Julia Bartl, Understanding the Heightening Syrian Refugee Crisis and Lebanon’s Political Polarization, Carthage Research Series (Carthage Center: Research & Information, January 2013), <http://www.ldn-lb.org/UserFiles/carthage%201%20final.pdf>.

<sup>113</sup> <http://www.unrwa.org/where-we-work>.

<sup>114</sup> Human Rights Watch, *Lebanon: Palestinians fleeing Syria Denied Entry*, Aug. 8, 2013, <http://www.hrw.org/news/2013/8/07/lebanon-palestinians-fleeing-syria-denied-entry>.

<sup>115</sup> Human Rights Watch, *Lebanon: Palestinians Barred, Sent to Syria*, May, 6, 2014, <http://www.hrw.org/news/2014/05/05/lebanon-palestinians-barred-sent-syria>.

Lebanese by their mere presence, work and life here [...]. This comes out of our sense of nationality and not on racist bases. The emigration from our land must stop. Our youth is leaving and our place shouldn't be given to others... I am not saying that we need to close borders. Our borders should be for exporting goods abroad and for protecting ourselves and our country, Lebanon from all that is bad and contraband. This is the reason for having borders, not as an avenue for strange and evil ideas to enter and eat us from the inside.<sup>116</sup>

As of August 2013, the Lebanese government instituted new regulations allowing entrance to Palestinian refugees:

a valid pre-approved visa which required an application made by a guarantor in Lebanon; a valid visa and ticket to a third country – meaning they were only transiting through Lebanon; a scheduled medical or embassy appointment; or if they were able to prove they had family already legally in Lebanon (a family member had to send a valid copy of their residency permit to the authorities as proof).<sup>117</sup>

The fluctuation in Lebanon's stance on granting entrance to Palestinian refugees from Syria has manifested itself in continuous hardships for the Palestinians seeking safety in Lebanon. This eventually has led to many entering Lebanon illegally, or by using false documentation rendering the Palestinian refugees "without a clear legal status in the country and at risk of arrest, and deportation."<sup>118</sup>

Moreover, Lebanon used the "no-camp" policy to discourage Palestinian refugees fleeing from Syria from entering Lebanon. This policy "has led to a crisis in the availability of shelter, and in desperate choices of settlement areas, such as the already overcrowded pre-existing Palestinian refugee camps."<sup>119</sup>

Beginning in May 2014 the Lebanese government had another change in policies that regulated Palestinian refugees' entrance from Syria. Harsher conditions were implemented which have resulted in a decrease in the number of Palestinian refugees

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<sup>116</sup> Gebran Bassil, "Statement Made on the Celebration of the Lebanese Wine Day." January 2012.

<sup>117</sup> Amnesty International, "Denied Refugees: Palestinians from Syria Seeking Safety in Lebanon," Jul. 1, 2014, 6, available at <http://www.amnesty.org/en/library/asset/MDE18/002/2014/en/902e1caa-9690-453e-a756-5f10df39fce/mde180022014en.pdf>.

<sup>118</sup> *Id.*

<sup>119</sup> SARAH BIDINGER ET AL., PROTECTING SYRIAN REFUGEES: LAWS, POLICIES, AND GLOBAL RESPONSIBILITY SHARING, 29 (Boston University School of Law, International Human Rights Clinic 2014) (2014).

flow to Lebanon. The new regulations require them to present at least an entry permit approved by the General Security, a one-year or three-year residency visa, an exit and return permit, and/ or a valid ticket to a third country, “in which case they can get a 24-hour transit permit.”<sup>120</sup> As a result, between 15 April and 31 May 2014, the number of Palestinian refugees from Syria grew by only 73, a significant decrease compared to the previous six weeks.<sup>121</sup>

## **2. Palestinian refugees in Jordan**

Records from UNRWA show that Palestinian refugees fled from Syria to Jordan as early as March 2012.<sup>122</sup> “As of 29 October 2013, 9,657 Palestinian refugees from Syria had taken refuge in Jordan.”<sup>123</sup> These refugees managed to successfully register with the UNRWA offices in Jordan. Later in 2012, the Jordanian government decided to seek other means of protection for Palestinian refugees from Syria without the need for admitting them to its lands. Jordan’s Prime Minister Abdullah Ensour explained that Palestinian refugees were refugees only in Syria, and that Jordan was not a place for resettlement even in the light of the Syrian civil war. He explained why in an interview:

There are those who want to exempt Israel from their repercussions of displacing the Palestinians from their homes. Jordan is not a place to solve Israel’s problems. Jordan has made a clear and explicit sovereign decision not to allow the crossing to Jordan by our Palestinian brothers who hold Syrian documents. Receiving those brothers is a red line because that would be a prelude to another wave of displacement, which is what the Israeli government wants. Our Palestinian brothers have the right to go back to their country of origin. They should stay in Syria until the end of the crisis.<sup>124</sup>

Stemming from that notion, Jordan considered developing a buffer zone, on the Syrian border to offer the Palestinian refugees shelter without permitting them to

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<sup>120</sup> Amnesty, *supra* note 117, at 13.

<sup>121</sup> *Id.*, at 13.

<sup>122</sup> UNRWA, *Syria Crisis Situation Update*, 62 (29 Oct. 2013) <http://unrwa.org/newsroom/emergency-reports/syria-crisis-response-update-issue-no-62-0>.

<sup>123</sup> *Id.*

<sup>124</sup> Al-Monitor 2013: Jordan PM: We Can’t Accept Palestinian Refugees from Syria. Al-Monitor. 11 January 2013. <http://www.al-monitor.com/pulse/fr/contents/articles/politics/2013/01/jordanian-pm-we-cannot-receive-palestinian-refugees-from-syria.html>.

formally enter the country.<sup>125</sup> The rationale behind Jordan's actions was that the Palestinian refugees from Syria would cause a "dangerous precedent"<sup>126</sup> as the government feared the possibility of their mass exodus to Jordan.<sup>127</sup> In the end, Palestinian refugees were not admitted to a buffer zone because Jordan did not go through with the plan; instead, it "detained Palestinians who have entered Jordan through unofficial crossings without the possibility for release, except to Syria."<sup>128</sup>

As an alternative to the buffer zone, Jordan detained refugees in Cyber City;<sup>129</sup> this secluded Cyber City is remote and underdeveloped part of the city of Ramtha, and has little to offer Palestinian refugees from Syria. UNRWA is only able to provide the necessities to Palestinian refugees in Cyber City due to its remoteness and its strict supervision by the Jordanian government. Simultaneously, Palestinian refugees are not permitted to leave Cyber City "not allowed to move beyond 30 meters of the camp."<sup>130</sup>

Moreover, Jordan has compulsorily turned away Palestinian refugees from Syria,<sup>131</sup> discriminated against family members in entering Jordan based on their official documents, and even deported some members of families on the same basis.<sup>132</sup> This has rendered the Palestinian refugees from Syria even more helpless and vulnerable. They are either detained or forced to return to Syria where their refugee camps have been destroyed. In despair, Palestinian refugees often return to Syria where their livelihoods are compromised and their lives threatened.

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<sup>125</sup> 'Jordan to Establish Buffer Zone for Palestinian Refugees from Syria' Kuwait News Agency (9 Apr. 2012) <http://158.50.10.7/ArticleDetails.aspx?id=2232555&Language=en>.

<sup>126</sup> *Ibid.*

<sup>127</sup> 'Jordan Concerned over Growing Palestinian Refugee Influx' Palestinian News Network (3 Sep. 2012) available at <http://english.pnn.ps/index.php/international/2575-jordan-concerned-over-growing-palestinian-refugee-influx>.

<sup>128</sup> *Id.*

<sup>129</sup> A Cyber City is a walled complex of technology companies outside the city of Ramtha. See also, Human Rights Watch, *Nowhere to Flee for Palestinians from Syria*, 12 Aug. 2014. available at <http://www.hrw.org/news/2014/08/12/nowhere-flee-palestinians-syria>.

<sup>130</sup> 'Analysis: Palestinian Refugees from Syria feel abandoned' *IRIN Humanitarian News and Analysis*, Aug. 29, 2012, <http://www.irinnews.org/report/96202/analysis-palestinian-refugees-from-syria-feel-abandoned>.

<sup>131</sup> Amnesty International, *Growing Restrictions, Tough Conditions the Plight of Those fleeing Syria to Jordan*, Oct. 30, 2013 <http://www.amnestyusa.org/research/reports/growing-restrictions-tough-conditions-the-plight-of-those-fleeing-syria-to-jordan>.

<sup>132</sup> Human Rights Watch, *supra* note 68.

### 3. Palestinian refugees in Egypt

As of March 2015, there are 4,000 Palestinian refugees from Syria in Egypt.<sup>133</sup> These refugees should be *ipso facto* included in the UNHCR's mandate since they are not present in an area of UNRWA operations, according to the second part of Article 1D of the 1951 Refugee Convention, which Egypt is a signatory party to.<sup>134</sup> This fact entitles all refugees entering Egypt to be included in the UNHCR's mandate as per Article 7 (c) of the UNHCR's mandate as well as Article 1D of the 1951 Refugee Convention. In spite of the state's ratification of the 1951 Convention, Egypt has banned UNHCR from registering the Palestinian refugees from Syria. This move is in clear violation of UNHCR's mandate as well as Article 1D of the Refugee Convention.<sup>135</sup> The government asserts that the Palestinian refugees are not eligible for the protection of the UNHCR in Egypt.<sup>136</sup> The denial of Palestinian refugees right to be registered with an international entity that guarantees their rights as refugees and supplies refugee protection to them leaves them unprotected and vulnerable to all kinds of abuses.

Egypt has also orchestrated a set of regulations that inherently limit the arrival of the Palestinian refugees from Syria in particular. "Palestinians must arrive directly from Damascus to Egypt's Cairo airport."<sup>137</sup> Due to the closure of the airport in Damascus, this regulation makes the task of arriving to Cairo via Damascus airport impossible. As an alternative, Palestinian refugees from Syria have tried flying to Cairo either from Turkish or Lebanese airports. Since this is not accepted by the Egyptian government Palestinian refugees from Syria end up being detained in the Cairo airport compelled to return to Syria or end up in limbo status between Egyptian, Lebanese, and Turkish airports. Furthermore, Human Rights Watch has frequently reported that the Egyptian government

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<sup>133</sup> UNRWA, 'Syria Crisis Situation Update: Issue 85' (Mar. 18, 2015)

<http://www.unrwa.org/newsroom/emergency-reports/syria-regional-crisis-response-update-85>

<sup>134</sup> Egypt Signed the Refugee Convention in July 1951, and in May 1981, the state ratified the Convention and its 1967 Protocol.

<sup>135</sup> 'Egypt Creates Exception for Palestinian Refugees Fleeing Syria' Palestinian News Network (28 March 2013) available at <http://english.pnn.ps/index.php/international/4331-egypt-creates-exception-for-palestinian-refugees-fleeing-syria>.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

has practiced arbitrary detention of Palestinian Refugees from Syria: “Egypt has detained over 1,500 refugees from Syria, including at least 400 Palestinians and 250 children as young as two months old for weeks and sometimes months. Security officials have acknowledged that the refugees will be held indefinitely until they leave the country.”<sup>138</sup>

Since the Human Rights Watch report in 2013 Egypt has not amended its restrictive laws against Palestinian refugees from Syria and continues to maintain a tight grip on them. Human Rights Watch asserted this fact in its 2015 World Report on Egypt:

Egypt violated the rights of refugees, [and] asylum seekers, within its borders. Egypt prevented the UNHCR from registering Palestinians from Syria, and security officials maintained a restrictive visa and security clearance requirement enacted following the ouster of Morsy. In some instances authorities coerced refugees from Syria to leave to Lebanon, without assurances they would be protected there, and to Syria, where they face persecution, detention, and violence.<sup>139</sup>

Additionally, many Palestinian refugees from Syria consider Egypt as a transit stop to Europe. The main aim for many individuals is to cross the Mediterranean Sea and land in Europe where they can then seek asylum. “Egypt for them was a temporary stage before they reach Europe through the Mediterranean Sea on what became known as Death Boats.”<sup>140</sup>

#### **4. Palestinian refugees in Turkey**

Turkey became an option for Palestinian refugees from Syria seeking asylum in August 2011 when the Latakia refugee camp was bombed by Assad forces.<sup>141</sup> It has been reported that since April 2015, there are between 10,000 to 15,000 Palestinian refugees

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<sup>138</sup> HRW, Egypt: Syria Refugees Detained, Coerced to Return, Human Rights Watch (Nov. 11 2013 *available at* <http://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return>.

<sup>139</sup> HRW, World Report 2015: Egypt, *available at* [http://www.hrw.org/sites/default/files/wr2015\\_web.pdf](http://www.hrw.org/sites/default/files/wr2015_web.pdf).

<sup>140</sup> Maureen Clare Murphy, *Palestinian and Syrian refugees go on hunger strike in Egyptian jail*, Feb. 25, 2015, <https://electronicintifada.net/blogs/maureen-clare-murphy/palestinian-and-syrian-refugees-go-hunger-strike-egyptian-jail>.

<sup>141</sup> Tareq Hamoud, *The Impact of the Syrian Revolution on Palestinian Refugees*, 2 JPRS 7, 18 (2012).

from Syria in Turkey and Europe.<sup>142</sup> The Turkish government does not discriminate against the refugees fleeing the civil war in Syria. Both Syrian nationals as well as Palestinian refugees from Syria have been granted safe entrance. “Turkey’s current policy is to grant Temporary Protection, rather than refugee status, to all persons fleeing the situation in Syria.”<sup>143</sup>

Since 2011, each of the states that boarder Syria has been equally affected by the plight of the Syrian civil war. Every state has faced these difficulties and challenges differently, and each has dealt with the Palestinian refugees from Syria via a different mechanism. In practice the Palestinian refugees from Syria are the most vulnerable group affected by this lack of conformity. Only Turkey is still an option for Palestinian refugees from Syria. All other hosting countries have decided to turn away Palestinian refugees. “Since mid-2014 Turkey is the only one of the surrounding countries that will still allow entry to Palestinian refugees from Syria.”<sup>144</sup>

#### **D. Protection Gap Highlighted**

The lack of protection for the Palestinian refugees as they try to cross from troubled warzone areas across Syria to a safe state has labeled them as a vulnerable group and subjected them to a variety of host states’ laws that are not applied to any other group of refugees. Palestinian refugees from Syria are forced to accept callous treatment by some host states. Simultaneously, and due to the lack of the international community’s assistance and authoritarian oversight, this particular refugee group have found themselves being displaced for the second or third time around since the 1948 war and with nowhere to go.

*Refoulement* is the first evidence of the existence of the protection gap the Palestinian refugees from Syria face as they attempt to seek safety in host states. While *non-refoulement* is a *jus cogens* rule in International Law. States such as Jordan,

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<sup>142</sup> Palestinian Return Centre, Action Group for Palestinians of Syria, and Filistin Dayanışma Derneği (FİDDER), Report on the Conditions of Palestinian Refugees in Syria, 27.

<sup>143</sup> Bidinger, *supra* note 119, at 104.

<sup>144</sup> Roger Zetter and Héloïse Ruadel, *Development and Protection Challenges of the Syrian Refugee Crisis*, 47 FORCED MIGRATION REVIEW 6, 9 (2014).

Lebanon, as well as Egypt do not abide by it and ignore it when dealing with Palestinian refugees fleeing Syria. The term *jus cogens* means that all states, even those whom are not a signatory party of the 1951 Refugee Convention, are obliged to abide by it under the umbrella of customary international law. As mentioned by the 1951 Refugee Convention, *non-refoulement* is one of the principles in which the convention is based, as well as affirming that *non-refoulement* is embedded in customary international law.<sup>145</sup> In addition to the 1951 Refugee Convention Article 33 asserts the prohibition of expulsion or return (“*refoulement*.”)<sup>146</sup> The article also reads that the principle applies to refugees whose “life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>147</sup> Hence, the action of turning back Palestinian refugees from Syria from any border does in fact threaten their lives due to their political stands, original country of descent, or nationality.

In the case of Jordan, it is evident that it has breached customary international law in turning away Palestinian refugees from Syria. In the Jordanian context, Prime Minister Abdullah Ensour explained the Jordanian government’s ideology behind Jordan’s barring of the Palestinian refugees fleeing from Syria, in particular, as previously examined, even to those who possess Syrian documents. Though Jordan is not a signatory party to the 1951 Refugee Convention or its protocols, it is still obliged to admit Palestinian refugees fleeing the war in Syria. It can be argued that due to demographic concerns as well as political ones, Jordan took this stand against the presence of a new wave of Palestinian refugees in its state. To many, Jordan acts as an alternative homeland to about 2,097,338 registered Palestine refugees.<sup>148</sup> Jordan has relentlessly rejected this ideology and acted against its realization.

Nonetheless, the Jordanian practice of non-entry to the Palestinian refugees is breach of the principle of *non-refoulement*.<sup>149</sup> Human Rights Watch has repeatedly

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<sup>145</sup> Convention and Protocol relating to the Status of Refugees, July 28, 1951.

<sup>146</sup> Convention and Protocol relating to the Status of Refugees art. 33, July 28, 1951.

<sup>147</sup> *Id.*

<sup>148</sup> UNRWA, where we work: Jordan. available at <http://www.unrwa.org/where-we-work/jordan>.

<sup>149</sup> Human Rights Watch. “Jordan: Obama should Press king on Asylum Seeker Pushbacks. available at <https://www.hrw.org/news/2013/03/21/jordan-obama-should-press-king-asylum-seeker-pushbacks>.



reported the non-entry policies practiced by the Jordanian government on its borders, “there have even been documented cases of refoulement from Jordan. UNRWA has repeatedly urged Jordan to allow PRS [Palestinian refugees from Syria] across the border.”<sup>150</sup>

In the case of Lebanon, the resentment towards the presence of refugees is noticeable and is equally mirrored in harsh practices and rules that address Palestinian refugee matters directly. The conditions under which Palestinian refugees from Syria are placed under are quite impossible at times. Similar to Jordan, Lebanon is not a signatory party of the 1951 Refugee Convention, yet is still obliged by customary international law to grant Palestinian refugees from Syria entrance under the principle of *non-refoulement*. It has been documented that UNRWA has tried to assist and promote the entrance of Palestinian Refugees from the Syrian-Lebanese border. “UNRWA border officials not only monitor the numbers of border-crossers, but also intervene and advocate on behalf of individual refugees when border officials engage in discriminatory or unlawful treatment.”<sup>151</sup>

Lebanon is faced with an abundance of issues when it comes to accepting the current mass influx of refugees. It is a relatively small country that has been struggling with events that shape its current ideology towards refugees. First, Lebanon has d resources; the shortage in water supply and electricity has always been a challenge for Lebanese citizens. Hence, when the population residing in Lebanon increase by millions in a short time, the government is incapable of accommodating these needs on an emergency basis and in practically has had no time whatsoever to prepare for them. Second, Lebanon is fearful of the demographic changes it is undergoing since the beginning of the Syrian civil war. The number of refugees is in constantly increasing. Finally, UN acting bodies in Lebanon, mainly UNHCR and UNRWA that are the main financial facilitators to refugees from Syria are underfunded. Both agencies have pleaded

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<sup>150</sup> MATTHEW A. REYNOLDS, THE CURRENT PLIGHT OF PALESTINE REFUGEES IN SYRIA, 107 AM. SOC'Y INT'L L. PROC. 368, 368, 370 (2013).

<sup>151</sup> *Id.* at 32.

with UN and other International entities to increase supply aid and assistance to the refugees in order to meet the bare minimum of their needs.<sup>152</sup>

Egypt has also shared this policy of not granting Palestinian refugees from Syria entrance. Though Egypt is a signatory party to the 1951 Refugee Convention, it has refused to grant Palestinian refugees from Syria entrance. Since *non-refoulement* is clearly stated in the 1951 Refugee Convention as well as a UNHCR's mandate. Egypt is in clear breach of the both conventions as well as customary international law.

Second, Jordan, Lebanon, and Egypt are using clear discriminatory policies towards Palestinian refugees from Syria as they attempt to enter any of the host states. All borders discriminate against the entrance of the Palestinian refugees from Syria based on their identification papers. Consequently, all three states are in breach of the International Convention on the Elimination of All Forms of Racial Discrimination (ICCPR), which all three states are signatory parties to. Syria's neighboring states have been selective in granting entrance to refugees. Syrian refugees are granted safe passage to the host countries while Palestinian refugees from Syria are not.

Third, Denial of refugee status to the Palestinian refugees as they leave Syria and enter host states renders Palestinian refugees from Syria unprotected. This leads them to lose all their rights under customary international law and human rights law. This line of thought and practice is emulated in both the Jordanian logic,<sup>153</sup> as well as the Egyptian one.

The clear and firm actions of the Jordanian government mirrors Jordan's understanding that the Palestinian refugees from Syria are only refugees within the borders of Syria, and do not enjoy the same status when they are forced out of the troubled country. The Jordanian logic is flawed in many respects. They mix Israel's occupation of Palestinian lands in 1948 with the Syrian civil war. The former is not the

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<sup>152</sup> ROGER ZETTER, THE SYRIAN DISPLACEMENT CRISIS AND A REGIONAL DEVELOPMENT AND PROTECTION PROGRAMME: MAPPING AND META-ANALYSIS OF EXISTING STUDIES OF COSTS, IMPACTS AND PROTECTION (2014), [HTTPS://DATA.UNHCR.ORG/SYRIANREFUGEES/DOWNLOAD.PHP?ID=4780](https://data.unhcr.org/syrianrefugees/download.php?id=4780)

<sup>153</sup> Al-Monitor, *supra* note 124.

cause of the latter or connected to it, and vice versa. In addition to that, Palestinian refugees from Syria are a recognized group of refugees by international law as well as other international entities. Hence, even if they leave their place of residence they should still enjoy refugee status wherever they are; denying them their rightful status is a breach in itself. Jordan's detention of Palestinian refugees in Cyber City<sup>154</sup> is a breach of the International Covenant on Civil and Political Rights.<sup>155</sup> This would not have been the case if Jordan had respected its obligations under customary international law.

In the Egyptian context, Egypt has refused to allow Palestinian refugees from Syria to register with the UNHCR on the same Jordanian grounds. "The Egyptian government's prohibition of UNHCR registration and RSD<sup>156</sup> has resulted in a failure on the government's part to extend Convention refugee protection to Palestinians from Syria."<sup>157</sup>

Palestinian refugees from Syria are not recognized as refugees within Egypt. "The [Government of Egypt] GoE recognizes Palestinians merely as visitors or tourists—not refugees."<sup>158</sup> Yet, since Egypt is not an area of UNRWA operations, Palestinian refugees are *ipso facto* included in the UNHCR's mandate based on Article 7 (c) as well as Article 1D of the 1951 Refugee Convention. "Because Egypt does not allow for Palestinians to receive refugee status, [Palestinian refugees from Syria] PRS have no access to UNHCR yellow cards. Without a yellow card, PRS cannot receive a residency permit from the government, which places PRS in a particularly susceptible position for arrest and removal"<sup>159</sup>

Egypt's discriminatory practices against the Palestinian refugees from Syria deny them their rights under refugee law and human rights law. Yet, even if Egypt denies

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<sup>154</sup> According to UNRWA's 2013 report, *Syria Crisis Response Annual Report*, "a closed facility near the border where their movements are severely restricted."

<sup>155</sup> Amnesty International, *Growing Restrictions, Tough Conditions: The Plight of those Fleeing Syria to Jordan*, <http://www.amnestyusa.org/research/reports/growing-restrictions-tough-conditions-the-plight-of-those-fleeing-syria-to-jordan>.

<sup>156</sup> Refugee Status Determination.

<sup>157</sup> BIDINGER, *supra* note 119, at 84.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

recognition of the refugee status of the Palestinian refugees from Syria, Egypt still shares an obligation under human rights law to assist and aid this group both, Palestinian refugees generally and those fleeing from Syria in particular.

All the previously mentioned proves the presence of a protection gap in the Palestinian refugees from Syria context. The international law breaches committed against Palestinian refugees from Syria would not be present if the protection gap did not actually exist. Mirroring the practices exercised against Palestinian refugees from Syria; it is evident that there is no level of protection for this particular group in the first place. Hence, all actions against them are somewhat justifiable in the eyes of Jordan, Lebanon, and Egypt, which were highlighted by the Syrian Civil war.

Attempting to remedy the situation for Palestinian refugees from Syria is a possibility if the international bodies as well as host states had a more committed demeanor towards solving the Palestinian refugees' dilemma. First, this is true if UNRWA had in its capacity and mandate to enforce protection awarded to Palestinian refugees by host governments. Second, present a clear interpretation of article 1D of the 1951 Refugee Convention that enables Palestinian refugees from benefiting from the convention. Third, if an independent, international, mechanism was created to oversee the treatment of Palestinian refugees from Syria in host states. And finally, and most importantly, if host states granted Palestinian refugees from Syria "temporary protection status" to ensure their protection until the war is over in Syria and get settled back in Syria or elsewhere, the situation would be remedied.

### **E. Temporary Protection**

The concept of Temporary Protection Status [hereinafter TPS] is an international law norm, and one that is evidently needed at times when there is no other solution for refugees present. This offers the most minimal form of protection at times of necessity. "Under temporary protection the persons or groups benefit fewer rights relative to

Convention refugees.”<sup>160</sup> TPS guarantees open borders to refugees which affirms the right to *non-refoulement*, and guarantees preserving human rights law when tackling matters of concern to the refugees, as well as the guarantee that once the original habitual place of the refugee group becomes a safe zone, the refugees will be able to go back to their original states of residency and resume their lives without burdening the host states.

Awarding Palestinian refugees TPS will present benefits to the Palestinian refugees and deliver guarantees to the host states that their responsibilities would not be permanent; first, and as the name implies the status of this protection is temporary in nature, yet, it still entails providing protection to refugees whom do not enjoy the right of protection. Contrary to the concept of protection in the 1951 Refugee Convention as well as the Mandate of the UNHCR, both entities as well as the host states are obligated to cooperate with one another and search for a durable solution and/or resettlement options and integration. The concept of TPS does not grant all protection rights to refugees. However, it does play an essential role in preserving their rights in many ways as well as keeping safeguarding them after fleeing areas of conflict.

Granting Palestinian refugees from Syria a TPS will allow them to enter hosting states safely and not be in danger of *refoulement*. The aim is to preserve Palestinian refugee lives and not return them to the war zone in Syria. The benefits are numerous:

However labeled, the concept of temporary refuge/temporary protection as the practical consequence of non-refoulement through time provides, first, the necessary theoretical nexus between the admission of refugees and the attainment of a lasting solution. It establishes, a priori, no hierarchy in the field of solutions, but allows a pragmatic, flexible, yet principled approach to the idiosyncrasies of each situation. So, for example, it does not rule out the eventual local integration or third country resettlement of all or a proportion of a mass influx in the State of first refuge, acting in concert with others and pursuant to principles of international solidarity and equitable burden-sharing. Secondly, the concept provides a platform upon which to build principles of protection for refugees

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<sup>160</sup> Susan M. Akram & Terry Rempel, Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees, 22:1 B.U. INT’L L.J. 1, 12 (2004).

pending a durable solution, whereby minimum rights and standards of treatment may be secure.<sup>161</sup>

Second, granting Palestinian refugees fleeing from Syria TPS is a form of fulfilling the humanitarian aspect of state liability to refugees. Under human rights law, there is a liability of protecting refugees and assisting them when a host state is capable of doing so, “human rights law is *the* primary source of refugee protection, while the Geneva Convention is bound to play a complementary and secondary role.”<sup>162</sup> In this case, host state responsibility, although not binding in nature, proves that states are welcoming to the refugee groups as well as living up to its obligations under customary international law.

Third, accepting Palestinian refugees from Syria as refugees with TPS will relieve the host states from the burden of resettling a mass influx of refugees, as well as processing thousands of asylum seekers into their systems. Hence, this lightens a burden of resettlement, in granting asylum, as well as assisting in relocating them for a durable solution. This option is not available to Palestinian refugees anywhere, except in the context of the Turkish Government’s actions.

It is only in Turkey where Palestinian refugees from Syria share with the Syrian nationals the right in ‘Temporary Protection Status’ which grants them a limited number of rights, yet sufficient enough to ensure their safety in Turkey. Within the Temporary Protection Status, all refugees are welcomed at the Turkish border without discrimination. They are also granted a safe stay in Turkey until matters in Syria are resolved. “Palestinians ex-Syria undergo the exact registration process that is afforded to Syrians, and are not subject to discriminatory treatment.”<sup>163</sup>

Finally, the norm TPS indicates that this form of protection is transitory and not permanent. Consequently, Palestinian refugees from Syria are not to stay in any of the

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<sup>161</sup> GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW*, 343-344 (Oxford University Press 2007) (2007).

<sup>162</sup> Vincent Chetail, Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law, *in* HUMAN RIGHTS AND IMMIGRATION 19-72 (R, Rubio-Marin ed. 2014).

<sup>163</sup> *Id.* at 112.

host states indefinitely. As soon as the civil war subsides in Syria, Palestinian refugees will return back to their original habitual state, and thus relieving host states of any social or economic responsibility.

## VI. Conclusion

Refugees are a vulnerable group by default and are left without internal protection due to a “well-founded fear of being persecuted”<sup>164</sup> which has resulted due to their lack of diplomatic protection by countries of their origin or habitual residence. The alarming number of refugees indicate that conflict zones in the world are becoming a serious threat to the international security, which has lead to the attention international law has given this matter through customary and treaty-based international law.

Furthermore, as soon as refugees seek asylum and protection in host states they are put at the mercy of signatory parties’ fulfillment of the 1951 Refugee Convention, its 1967 Protocol, as well as UNHCR that acts on behalf of refugees worldwide. While there is no clear understanding of a protection gap in international law, it is logical to assume that protection is measured by its absence; hence, the absence of certain protection measures granted to refugees highlights a gap both refugees and host states fall into.

Among the many groups of refugees worldwide, Palestinian refugees residing in the Middle East are the most protracted refugee problem. For over 67 years the Palestinian refugees in the Middle East have been marginalized, since their dilemma is of a political nature at core, and little has been offered to them. Aid awarded to Palestinian refugees only includes day-to-day life sustenance and short-term solutions to the longest refugee problem in the Middle East. The Palestinian refugees are the largest group of refugees to be described by international law based on their; “criterion of ethnic or territorial origin, coupled with a stipulation that the applicant not enjoy de jure national protection.”<sup>165</sup>

This paper aimed at addressing the concept of a protection gap that Palestinian refugees from Syria have fallen under since the outbreak of the Syrian Civil War in 2011. Moreover, the paper argues that UNRWA practices are insufficient to reach a durable solution for Palestinian refugees in the Middle East. The evidence is based on events

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<sup>164</sup> UN General Assembly, *supra* note 5, Article 3.

<sup>165</sup> HATHAWAY, *supra* note 49, at 4.



happening post the Syrian civil war in 2011 and prior to the civil war in revising the Works and Relief Program offered by the UNRWA to Palestinian refugees from Syria.

In order to understand the tangled situation Palestinian refugees are in, it was necessary to examine Palestinian refugees' relationship to the UN and its executing bodies that tackle Palestinian refugee matters on a first-hand basis. Some might argue that the reason behind its presence is UN itself. Both UNCCP and UNRWA have contributed one way or the other in Palestinian refugee lives. UNRWA's mandate revolves around granting Palestinians day-to-day assistance and aid. But, UNRWA's mandate does not define protection. UNRWA also lacks providing Palestinian refugees with protection measures necessary to secure a more stable situation or a durable solution. What UNRWA offers is only a form of "relief protection."<sup>166</sup>

[Palestinian refugees] currently receive only the most basic assistance and short-term protection. Presently, the lack of formalized protection measures ensures that the approximately 7.5 million Palestinian refugees strewn throughout the Arab world will never have any form of resolution. This has created, and threatens to continue creating, a perpetuation of multiple forced displacements for refugees.<sup>167</sup>

It is also important to discuss the relationship between Palestinian refugees and international law. This is manifested in both article 1D of the 1951 refugee Convention and article 7 (C) of UNHCR Statute. Both articles exclude Palestinian refugees from benefiting from the protection awarded by the convention and UNHCR. Article 1D of the 1951 Refugee Convention has an exclusion clause that targets Palestinian refugees, in particular, since they are the only refugee group in the world with a UN dedicated agency to provide assistance, aid, and works program. Similar to Article 1D, Article 7(c) of the UNHCR statute also discusses how Palestinian refugees are excluded from the protection of the UNHCR on the same basis: Palestinian refugees receive aid from another entity, and hence do not fall under the UNHCR mandate. In addition, the presence of UNRWA

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<sup>166</sup> David Forsythe, *UNHCR Mandate: the Politics of Being Non-Political*, Working Paper No.33, Geneva: UNHCR (2001)

<sup>167</sup> Salahi, *supra* note 86, at 140.

as an agency acting on behalf of Palestinian refugees is limited in nature and not sufficient to grant Palestinian refugees the protection they lack. Palestinian refugees are privileged to have a UN entity that is solely dedicated to their cause even if the Palestinian plight was a result of the UN itself.

Defining the Protection Gap theory helps create the threshold of protection awarded to refugees is necessary protection for refugees who fall into a protection gap. Hence, for the intents and purposes of this paper the bare minimum of protection granted to refugees entails their right in *non-refoulement* as well as conceptualizing that aid presented to them is more than a privilege but a right. These two concepts are the essence of protection awarded to refugees; hence their absence amounts to a protection gap for any group of refugees and not just the Palestinian refugees exclusively who suffer from it.

In order to shed more light on the discussion of the concept of protection gap, the theory was tackled from two perspectives *de jure* and *de facto*. Both are necessary to elaborate on the protection gap theory. While the presence of a protection gap from a *de jure* standpoint can be debated as it is exclusively dependent on the rule of law and its interpretations that stipulate the measures of treatment to refugees as well as their rights under international refugee law, international law, as well as human right law. Covering the protection gap theory from a *de facto* viewpoint is not as debatable, since treatment of refugees in host states is visible and defiantly acts as proof of the presence of a protection gap for refugees.

In order to further highlight the protection gap theory, and answer whether there was a protection gap prior to the dilemma of Palestinian refugees from Syria in 2011, two aspects are examined. The first aspect is, examining the scholarly debate revolving around the protection gap theory for Palestinian refugees in general. This debate is extensive. These many are strong believers and supporters of the presence of a gap and call for amendments into the laws that hinder granting Palestinian refugees' protection in particular. Others negate the presence of a protection gap for Palestinian refugees and

countered that the assistance and aid presented to them is exactly what is stipulated in UNRWA mandate and in accordance with UN's policy

The second is the situation of Palestinian refugees in Syria prior to the civil war. The Palestinian refugees residing in Syria were granted Syrian citizen-like rights. They were allowed home ownership; they were granted access to education as well as healthcare, and were granted equal employment opportunities equal to Syrian nationals. Perhaps only Jordan has granted Palestinian refugees similar rights. Yet, the socio-economic integration of the Palestinian refugees was more evident in Syria than in Jordan, and defiantly more welcomed by the state as well as the citizens of Syria than in Jordan.

Since the Syrian civil war, about one-third of the Syrian population has been forced to leave their homes.<sup>168</sup> This has created a large scale exodus of refugees and asylum seekers in the Middle East and the world. Syria's neighbors as well as the international community currently shoulder the burden of these refugees; 680,000 of this new wave of refugees are Palestinian refugees that took refuge in Syria post the 1948 Arab-Israeli war.<sup>169</sup> The treatment the Palestinian refugees from Syria have received, by host states, mounted to international law breaches and caused refugee-hosting states to fall into a protection gap. Henceforth, Palestinian refugees from Syria fall into a *de facto* protection gap. This is evident in examining the host states' attitudes and reaction towards the Palestinian refugees. The respective states of Jordan, Lebanon, Egypt, and Turkey react differently to the mass influx of Palestinian refugees.

First, Jordan denied entrance to Palestinian refugees from Syria, and in further attempts to control the number of the Palestinian refugees from Syria, Jordan created a Cyber City to detain Palestinian refugees rather than host them in refugee camps that were dedicated to the Syrian refugees or locate them in the already existing Palestinian

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<sup>168</sup> International Displacement Monitoring Centre, Syria: a Full-Scale Displacement and Humanitarian Crisis with no solution in sight (2013). <http://www.internal-displacement.org/middle-east-and-north-africa/syria/2012/a-full-scale-displacement-and-humanitarian-crisis-with-no-solutions-in-sight>.

<sup>169</sup> UNRWA, Syria Crisis Situation Update: Issue 62, Oct. 29, 2013. <http://www.unrwa.org/newsroom/emergency-reports/syria-crisis-response-update-issue-no-62-0>.

refugee camps in Jordan. Moreover, Jordan denied Palestinian refugees their refugee status outside Syria, and called for their staying in Syria until the conflict in Palestine has ended and they can return to their original home. This is hostile position that threatens Palestinian refugees' life and was vividly voiced by Jordan's Prime Minister Mr. Ensour.

Lebanon, on the other hand, denied Palestinian refugees from Syria access to Lebanon based on their documentation, a clear form of discrimination and a violation of Palestinian refugee rights. Moreover, Lebanon initially created several harsh regulations to grant Palestinian refugees entrance. These regulations led to illegal attempts to cross the Lebanese borders, as well as a noticeable decrease in the numbers of Palestinian refugees seeking asylum in Lebanon. As for those who were granted a safe passage to Lebanon, they were subjected to harsh living conditions in the already over populated Palestinian refugee camps in Lebanon.

Egypt created punitive and somewhat impossible conditions for allowing Palestinian refugees from Syria entrance to Egypt. Also, the Egyptian government denied refugee status to Palestinian refugees from Syria, hence hindering the process of their registration with the UNHCR in Egypt. Moreover, Egypt has detained many Palestinian refugees seeking safety in Egypt. Among the detainees, children were reported to be in lockdown with their families with nowhere else to go but back to Syria.

Turkey, on the other hand, is the only state that has treated the mass influx of refugees equally both Syrian and Palestinian. Although it does not recognize refugees from outside Europe, it granted Temporary Refugee Status to both refugee groups.

Based on this analysis, it is clear that all of the states affected by the Syrian civil war with the exception of Turkey have committed the following international law violations against the Palestinian refugees from Syria; *refoulement*, discriminatory policies, as well as denial of refugee status.

Stemming from this notion, the proposal of granting Palestinian refugees from Syria Temporary Protection Status would ensure their protection as well as ensure that host states would not shoulder the burden of these refugees for an extended period of

time. As the name implies, Temporary Protection Status is short-term in nature. Host states will not fall into a protection gap by fulfilling the rules of customary international law. Even more so, host states will be relieved of the burden of resettling the Palestinian refugees from Syria or having to ensure their social as well as economic integration in these hosting states. Temporary protection is to some extent a quick remedy to a messy situation, as Fitzpatrick explains:

Temporary protection is like a magic gift, assuming the desired form of its enthusiasts' policy objectives. Simultaneously, it serves as a magic mirror of its observers' fears. For refugee advocates, TP [temporary protection] expands the protection of forced migrants who cannot satisfy the criteria under the 1951 Convention and it promises group-based protection when the determination of an individual's status proves impossible. At the same time, refugee rights organizations fear that informal and discretionary TP may dislodge refugee protection from the realm of enforceable human rights.<sup>170</sup>

The nature of UNRWA's assistance is limited to health care, education, economic assistance, as well as the micro-financing of small projects to Palestinian refugees. "UNRWA's intermittent attempts to fill this gap have been stymied by the acknowledged limitation of its mandate and strong Israeli opposition to any expansion of its role."<sup>171</sup> These reasons add to the limitations of UNRWA in the sense that it is not only limited by its mandate; it is also limited by political pressure from the state of Israel. This all indicates the presence of a protection gap for Palestinian refugees.

In conclusion, protection for refugees entails many rights, the most important of which are granting asylum, resettlement possibilities, and full social and economic integration. Other protection measures include international law norm *non-refoulement* and temporary protection status. In totality, these rights are essentially denied to the Palestinian refugees because there is not a clear protection mandate that includes Palestinian refugees and the interpretation of the existing laws hinder associating Palestinian refugees with other refugee groups in the world.

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<sup>170</sup> Joan Fitzpatrick, Temporary Protection of Refugees: Elements of a Formalized Regime, 94 AM. J. INT'L L. 280, 289 (2000).

<sup>171</sup> Tekkenberg, *supra* note 14, at 280.